IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4237 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGVATIBEN GOVINDBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioner

MR ND GOHIL, AGP, for Respondents No. 1 & 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/08/2000

ORAL JUDGEMENT

1. The petitioner has approached this Court with this petition against the order passed by the Secretary (Appeals), Revenue Department, Gujarat State, in SRD/HKP/RJT/9/93, decided on the 28th March, 1995, (Annexure-G), dismissing the revision and confirming the

order of the District Collector, at Rajkot in Land Revision-108/6/11/93 passed on the 16th August, 1993 (Annexure-F). The petitioner challenges the above two orders.

2. The facts leading to the present petition can be stated thus:-

2.1 The petitioner lady is daughter of Babulal Laljibhai Tank, son of Laljibhai Hirjibhai Tank, who was resident of village Jodia, of Jamnagar district. The petitioner was married to Govindbhai Manjibhai Solanki. The petitioner's father-Babulal was an agriculturist and owned agricultural lands and inherited lands from his father-Laljibhai. According to the petitioner, she owned agricultural land at village Bhesan as well as at village Bodka in Jodia taluka of Jamnagar district and, therefore, the case of the petitioner is that she is an agriculturist. Survey No.469/2, admeasuring 1 acre and 27 Gunthas situate at Rajkot, near Air Port was of the ownership of one Khodabhai Becharbhai Patel. The said Khodabhai Becharbhai executed a will on 3.8.1983 whereby he bequeathed survey No.469/2 to the petitioner. Khodabhai Becharbhai expired on the 22nd May, 1985. Civil Misc. Application No.178 of 1985 was filed in the Civil Court at Rajkot for obtaining Letters of Administration. The said application was allowed by order dated the 16th August, 1988 and Letters of Administration was granted. The petitioner, therefore, approached the Talati-cum-Mantri, Rajkot for entering the name of the petitioner in the records of right on basis of the said will made by Khodabhai Becharbhai Patel and on the 1st September, 1988, the petitioner's name was entered as owner in the records of right (Annexure-A). According to the petitioner, while entering her name in the records, notice under Section 135D of the Bombay Land Revenue Code was issued and after proper inquiry and after following due procedure under the Bombay Land Revenue Code, the entry was made in favour of the petitioner. The said entry was certified on the 12th October, 1988.

2.2 The said land fell within the ambit of Rajkot Urban Agglomeration and in view of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 ("ULC Act" for short), the petitioner was required to file Form-I under Section 6(1) of the said Act and the form was duly filled in by her before the Additional Collector and Competent Authority, which was numbered as 4131. As it happened, deceased Khodabhai Becharbhai Patel had also filled in Form-I under Section (1) of the ULC Act upon

the said Act coming into force. The said form was filled in on August 12, 1978. The said form was processed and draft statement under Section 8(3) of the Act was prepared and final statement under Section 8(4) was issued on May 22, 1985. Being aggrieved by the said order passed by the Competent Authority, the deceased-Khodabhai Becharbhai Patel preferred an appeal under Section 33 of the ULC Act, which was registered as Appeal No.Rajkot 55 of 1985 before the Urban Land Tribunal. Pending that appeal, Khodabhai Becharbhai expired and, therefore, the petitioner, after obtaining Letters of Administration, filled in the form under Section 6(1) of the Act.

2.3 The appellate authority, in the meantime, confirmed the order of the Competent Authority on the 26th September, 1988. The State Government, thereafter, published a notification under Section 10(3) of the said Act on November 5, 1988 and under Section 10(5) on December 16, 1988. Heirs of deceased Khodabhai Becharbhai, on the other hand, had preferred Special Civil Application No.464 of 1989 before this Court against the order passed in Appeal No.55 of 1985, which was partly allowed by this Court by order dated the 23rd February, 1989.

2.4 The petitioner's Form No.I came to be filed by the Competent Authority under the ULC Act on the 26th October, 1988, on the ground that the land was originally owned by Khodabhai, which was declared surplus. Aggrieved by the said order passed under Section 8(4), the petitioner preferred appeal under Section 33 of the ULC Act before the Urban Land Tribunal, which was registered as Appeal No.13 of 1992. The said appeal was allowed on August 29, 1992 (Annexure-B).

2.5 Against that order, the State of Gujarat preferred Special Civil Application No.12879 of 1994 in July 1994. The said petition is disposed of by order dated 5.5.1999 observing that the dispute involved in the petition was directly covered under the provisions of Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act No.15 of 1999) repealing the Urban Land (Ceiling and Regulation) Act, 1976, which has been adopted by the State Government by a resolution dated 30.3.1999. The Court observed that the petition had abated and, consequently, the impugned order passed against the petitioner also stood abated (xerox copy of the said order is placed on record by Mr. Raval, learned advocate for the petitioner, during the course of argument).

2.6 On the 23rd May, 1993, a show cause notice was issued by the Collector, Rajkot, under Rule 106(8) of the Land Revenue Rules taking in revision entry No.7 dated 1.9.1988 in respect of survey No.469/2 situate at Rajkot, calling upon the petitioner to show cause why the said entry should not be cancelled. The District Collector, Rajkot, after hearing the petitioner's advocate, passed the impugned order (Annexure-F) observing that the petitioner is not an agriculturist. This observation was made on the ground that she claims to be an agriculturist as her husband is also an agriculturist. But her husband became an agriculturist on basis of certain wrong entries being made at his instance for which Collector, Jamnagar had issued notices. It was also observed that the Will cannot be relied upon as there is reference to some fruit trees and such fruit trees are not to be found to have been shown in village forms.

3. Mr. Raval, learned advocate appearing for the petitioner, has assailed the orders mainly on following counts :-

(a) That the show cause notice is served after unreasonable delay of four years and seven months. He submitted that the entry was made on the 1st September, 1988, which was certified on the 12th October, 1988 and the show cause notice is given on the 23rd May, 1993. He submitted that the law does not prescribe any time limit, but as per various decisions of this Court as well as the Supreme Court, such powers are required to be exercised within reasonable time. He placed reliance on the decision in the case of Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim, (1997) 6 SCC 71 and Siddharthbhai B. Shah & Ors. v. State of Gujarat & Ors., 1999 (2) GLH 82 in support of his arguments.

(b) So far as the reasoning adopted by the authorities that the petitioner is not an agriculturist is concerned, Mr. Raval submitted that the petitioner's husband is an agriculturist. It is true that the Collector, Jamnagar, had issued notice on some erroneous belief, but now that notice has been withdrawn, a certified copy of which is tendered by him which is taken on record. It is dated the 29th April, 1995.

Mr. Raval submitted further that even otherwise the petitioner is an agriculturist from her

paternal side. Her father was an agriculturist and she would, therefore, become an agriculturist. He, therefore, submitted that the order is based on an erroneous finding.

(c) As regards the application of ULC Act and proceedings thereunder, Mr. Raval submitted that the land was bequeathed to the petitioner by virtue of a will for which Letters of Administration was obtained. The transfer was, therefore, by operation of law and, therefore, she had filled in Form No.-I under Section 6(1) of the ULC Act. Against the order of filing that form, she had approached the Urban Land Tribunal by Appeal No.13 of 1993, which was allowed by the Tribunal. The said order was challenged by the State of Gujarat by preferring Special Civil Application No.12879 of 1994, wherein this High Court held that the proceedings had abated, so also the impugned order. Mr. Raval, therefore, submitted that, on this count also, the petition may be allowed.

(d) As regards observation of the authorities that the will cannot be relied upon, Mr. Raval submitted that a Civil Court with competent jurisdiction has issued Letters of Administration and, therefore, it is not open for the authority to say that the will does not seem to be reliable only for the reasons that in earlier proceedings, there was no reference to the will and that fruit trees, etc. are not to be found. Mr. Raval submitted that, earlier proceedings were prior to the death of the testator and, therefore, there cannot be any reference to that. So far as other observation is concerned, Mr. Raval submitted that, in fact, trees did exist and this is very clear from a certificate produced at Annexure-J.

(e) Mr. Raval submitted that it is observed by the Collector that Section 135D notices were not served on the ULC authorities. In this regard, Mr. Raval submitted that the entry in favour of the petitioner was mutated on 1.9.1988 and the notification in favour of the State Government under the provisions of the ULC Act, which was dated 8.11.1988, was published only on 8.12.1988 and, as such, there is no question of giving any notice to the Competent Authority or any other authority under the ULC Act since there was no right accrued to the said authority.

3.1 Emphasizing on all these points, Mr. Raval urged that the petition may be allowed and the impugned orders may be quashed and set aside.

4. Mr. N.D. Gohil, learned Assistant Government Pleader, has opposed this petition. He has taken this Court through the affidavit in reply filed on behalf of the respondent authorities. The affidavit is sworn on the 26th June, 2000. Mr. Gohil submitted that the petitioner claims to be an agriculturist through her husband. He became an agriculturist on basis of wrong entries for which he was served with a notice by the Collector, Jamnagar. Mr. Gohil also submitted that the will, on basis of which the mutation entry was made, does not seem to be a true will for the reason that the land was acquired by the Government after ULC proceedings on basis of Form No.I filled in by the original owner, who is said to have willed out the property. Mr. Gohil submitted further that, in earlier proceedings, there was no reference or mention about the will or the probate and, therefore, the authority has rightly not relied upon it. Mr. Gohil submitted further it is for the first time that the petitioner is coming with a case that petitioner's father was an agriculturist. This contention was not taken in the earlier proceedings wherein the impugned order is passed and, therefore, new contention cannot be taken. Therefore, the petition may be dismissed.

5. Having regard to rival side contentions, at the outset, it may be noted that the notice issued by the Collector on the 23rd May, 1993 is alleged to be bad on ground of delay. The entry in question is dated the 1st September, 1988 and, therefore, there is a delay of about four years and seven months. The question is whether this can be said to be unreasonable delay. In this regard, it may be noted that there is no time limit prescribed for initiating such action. Even if no time limit is prescribed, such action is expected to be taken within a reasonable time. The Supreme Court in Mohamad Kavi Mohmad Amin v. Fatmabai Ibrahim, (1997) 6 SCC 71 observed that suo motu inquiry by the Mamlatdar under Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1976 should be initiated within a reasonable time. In that case, the sale of the land took place in December 1972 and suo motu inquiry was started in September 1973. It was held that the powers were not exercised within the reasonable time. It was observed that where no time limit is prescribed for exercise of powers under a statute, it should be exercised within a reasonable time.

Reference can also be made to State of Gujarat v. Raghav Natha, 10 GLR 992 where the Apex Court has given the same verdict that where statue does not prescribe time limit, the authority is expected to exercise the powers within a reasonable time and length of reasonable time must be determined by the facts of the case and the nature of the order. In the instant case, the proceedings are initiated after four years and seven months. The entry was made on the 1st September, 1988 and was certified on the 12th October, 1988. There is no reason or explanation tendered by the respondent authorities as to why the proceedings were initiated so late. Under the circumstances, it has to be observed that the proceedings were initiated belatedly and, therefore, cannot be supported.

5.1 Mr. Gohil has relied on the judgment in the case of Gangaben daughter of Hargovindbhai Vallabhbhai & Ors. v. Collector & Ors., 1998(1) GCD 722, wherein delay of about seven years was considered to be not unreasonable. However, it requires to be noted that, in that case, the authority concerned came to know about the breach in question very late and immediately thereafter, action was initiated. Further, as has been consistently observed by the Apex Court, whether delay is unreasonable or not is required to be determined by the Court in facts of each case. In the instant case, the respondent authorities have not even attempted to explain as to why the action was initiated after four years and seven months. Under the circumstances, the decision relied upon by Mr. Gohil cannot be accepted.

6. So far as the case that the petitioner is not an agriculturist is concerned, it may be noted, at the outset, that the petitioner is coming with a case of her being an agriculturist through her parental side, for the first time, before this Court and it was not raised before the lower authorities. However, even if the contention that was raised before the authorities below is considered, it is true that her claiming to be an agriculturist as her husband is an agriculturist was under a cloud by virtue of a notice issued by the District Collector, Jamnagar. But, as it is clear from the certified copy of the order passed by the Assistant Collector, Jamnagar, on the 29th April, 1995 in RRT 107/92-93, in that proceedings, the notice was withdrawn and the case was ordered to be removed from the register and, therefore, this ground does not survive. Painfully, it is required to be noted that, in the affidavit in reply, the respondent-authority has not made any reference to this, although the order is of 1995. In

this view of the matter, the finding that the petitioner is not an agriculturist as the fact of her husband being an agriculturist is under a cloud cannot be sustained.

7. Now, coming to the contention regarding ULC proceedings, it may be noted that, according to the authorities, the proceedings under the provisions of the ULC Act on basis of a form filled in by the deceased were over and the land vested in the Government and that the deceased, therefore, could not have bequeathed this property to the petitioner, it may be noted, in this regard, that the Will was made in 1983, i.e. prior to ULC proceedings. The ULC proceedings in respect of form filled in by the deceased were in progress and pending the appeal, the testator expired. He expired on 22.5.1985 and the appeal was decided on the 26th September, 1988, i.e. after the impugned entry was made. On basis of the impugned entry, the petitioner filled in Form No.I under Section 6(1) of the ULC Act. Ignoring that form, the earlier proceedings were continued and her form was ordered to be filed. That order was carried before the Urban Land Tribunal, which accepted the case of the petitioner. The said order was challenged by the State of Gujarat before this Court and this Court that the impugned order stood abated by virtue of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. In this regard, it requires to be noted that in the proceedings relied upon by the respondent authorities in support of form filled in by the testator, Section 10(3) notification dated 8.11.1988 was published in the Gazette on 8.12.1988. Against this, the entry was made on 1.9.1988 and was certified on 12.10.1988 by virtue of which the property was mutated to the petitioner and, therefore, the case of the respondent authorities cannot be accepted and the action cannot be supported.

8. As regards that contention that notice was not given to the ULC authorities under Section 135D of the Bombay Land Revenue Code, it may be noted that, as rightly contended, the entry was mutated on 1.9.1988 and certified on 12.10.1988 and the notification in favour of the State Government under the provisions of the ULC Act was published only on 8.12.1988 and, therefore, there was no question of issuing notice under Section 135D of the Code to the ULC authorities and, therefore, those proceedings cannot be said to be vitiated in any manner.

9. Last but not the least, the observations of the authorities regarding the mutation being not proper on basis of will on the ground that the description of the

property indicating existence of fruit trees is found to be factually incorrect and on the ground that there is no reference to such will in the earlier proceedings and, therefore, the will does not seem to be true Will also cannot be accepted. When a Civil Court with competent jurisdiction has issued Letters of Administration and probate, it is not for the authorities below to observe that the will does not seem to be true. So far as description of the property showing existence of fruit trees is concerned, the Collector has observed that there exists no such trees. But if certificate-Annexure-J is seen, it is issued by the Talati concerned which shows existence of about a dozen trees of various fruits including mango and coconut trees. Non-existence of such trees in the village form No.7/12 of 1983 is the basis adopted by the Collector for not accepting the will. The certificate speaks of the trees in 1995 and, therefore, it cannot help the petitioner much. But the observation of the Collector and founding of the order on this basis cannot be supported as an attempt is made to falsify a will, without jurisdiction, which is probated by the competent Civil Court. In this regard, it may also be noted that transfer on basis of this will was accepted by the Urban Land Tribunal. That order was challenged by the State Government in the High Court and the High Court disposed of the petition by saying that the proceedings have abated.

10. For the foregoing reasons, the petition deserves to be allowed and the same is allowed. The orders in question passed by respondents No.2 and 1, which are at Annexures-F and G, are hereby quashed and set aside. Rule is made absolute accordingly with no orders as to costs.

[A.L. DAVE, J.]

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